

By: Wu

H.B. No. 718

A BILL TO BE ENTITLED

AN ACT

relating to family care leave for certain employees; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 83 to read as follows:

CHAPTER 83. FAMILY CARE LEAVE

Sec. 83.001. DEFINITIONS. In this chapter:

(1) "Child" means a person:

(A) who is a biological, adopted, or foster child, a stepchild, or a legal ward of an employee; or

(B) for whom the employee stands in loco parentis.

(2) "Commission" means the Texas Workforce Commission.

(3) "Employee" means an individual who performs services for an employer for compensation under an oral or written contract of hire, whether express or implied. The term does not include an independent contractor.

(4) "Employer" means a person who employs 10 or more employees in this state.

Sec. 83.002. FAMILY CARE LEAVE. (a) An employee who has been employed by an employer for at least six months is eligible for family care leave for a period of eight weeks due to:

1 (1) the birth of the employee's child; or

2 (2) the placement of a child with the employee in
3 connection with the adoption or foster care of the child by the
4 employee.

5 (b) Eligibility for leave under this chapter expires on the
6 first anniversary of the date of the child's birth or placement with
7 the employee, as applicable.

8 Sec. 83.003. INELIGIBILITY OF CERTAIN EMPLOYEES FOR LEAVE.

9 An employee is not eligible for leave under this chapter with
10 respect to any day for which the employee receives:

11 (1) benefits under a law providing unemployment
12 compensation; or

13 (2) disability insurance benefits under any state or
14 federal law.

15 Sec. 83.004. AMOUNT OF PAY DURING LEAVE. (a) An employee
16 who is eligible for leave under this chapter is entitled to an
17 amount paid by the employer equal to the salary the employee would
18 have been paid if the employee had worked during that pay period.

19 (b) If the employee takes less than a full pay period of
20 leave under this chapter, the employer shall prorate the amount of
21 pay for each day of leave the employee takes.

22 Sec. 83.005. FORESEEABILITY OF LEAVE; NOTICE TO EMPLOYER.

23 (a) An employee who intends to take leave under this chapter shall,
24 before the 30th day preceding the date the leave is to begin, notify
25 the employer in writing of the employee's intention to take the
26 leave. If the date of the birth or placement of the child requires
27 that the leave begin in less than 30 days, the employee shall

1 provide notice to the employer as is practicable.

2 (b) An employee may take leave under this chapter
3 intermittently if the employee notifies the employer in writing.

4 (c) If an employee gives notice of intermittent leave under
5 Subsection (b), the employer may require the employee to transfer
6 temporarily to an available alternative position offered by the
7 employer for which the employee is qualified and that:

8 (1) has equivalent pay and benefits; and

9 (2) better accommodates recurring periods of leave
10 than the regular employment position of the employee.

11 (d) On notice by an employee under Subsection (a), an
12 employee may take leave under this chapter on a reduced leave
13 schedule. Work performed by an employee on a reduced leave schedule
14 does not reduce the total amount of leave to which the employee is
15 entitled.

16 Sec. 83.006. SUBSTITUTION OF OTHER PAID LEAVE PROHIBITED.
17 An employer may not require an employee to substitute accrued paid
18 vacation leave, personal leave, medical or sick leave, or other
19 leave for leave provided under this chapter.

20 Sec. 83.007. LEAVE NOT CONCURRENT WITH FEDERAL FAMILY LEAVE
21 ACT. An employee who is entitled to leave under the federal Family
22 and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) is
23 entitled to take leave under that law in addition to any leave taken
24 under this chapter.

25 Sec. 83.008. NOTICE BY EMPLOYER REQUIRED; CIVIL PENALTY.

26 (a) Each employer shall post in conspicuous places on the premises
27 of the employer where notices to employees and applicants for

1 employment are customarily posted a notice, prepared or approved by
2 the commission, setting forth the pertinent provisions of this
3 chapter and information relating to the enforcement of this
4 chapter.

5 (b) An employer who wilfully violates this section is liable
6 for a civil penalty not to exceed \$100 for each violation. The
7 attorney general may bring an action to collect a civil penalty
8 under this section. Civil penalties assessed under this section
9 shall be deposited in the general revenue fund.

10 Sec. 83.009. EMPLOYMENT AND BENEFITS PROTECTION;
11 EXCEPTION. (a) An employee who takes leave under this chapter is
12 entitled, on return from the leave, to reinstatement in the former
13 position of employment or an equivalent position of employment with
14 equivalent employment benefits, pay, and other terms and conditions
15 of employment.

16 (b) Leave taken under this chapter may not result in the
17 loss of any employment benefit accrued before the date on which the
18 leave began.

19 (c) This section does not entitle an employee who is
20 reinstated in employment to:

21 (1) the accrual of seniority or other employment
22 benefits during any period of leave; or

23 (2) any right, benefit, or position of employment
24 other than any right, benefit, or position to which the employee
25 would have been entitled had the employee not taken the leave.

26 (d) This section does not prohibit an employer from
27 requiring an employee on leave under this chapter to report

1 periodically to the employer on the status and intention of the
2 employee to return to work.

3 Sec. 83.010. COMMISSION POWERS AND DUTIES. The commission
4 shall adopt rules as necessary to implement this chapter.

5 Sec. 83.011. PROHIBITED ACTS. (a) An employer may not
6 interfere with, restrain, or deny the exercise of or the attempt to
7 exercise any right provided under this chapter.

8 (b) An employer may not discharge or otherwise discriminate
9 against an individual for opposing a practice made unlawful by this
10 chapter.

11 (c) A person may not discharge or otherwise discriminate
12 against an individual because that individual has:

13 (1) filed a charge, or instituted or caused to be
14 instituted a proceeding, under or related to this chapter;

15 (2) given, or is about to give, any information in
16 connection with an inquiry or proceeding relating to a right
17 provided under this chapter; or

18 (3) testified, or is about to testify, in an inquiry or
19 proceeding relating to a right provided under this chapter.

20 Sec. 83.012. ENFORCEMENT. (a) An employer who violates
21 Section 83.011 is liable to an affected individual for damages
22 equal to the amount of:

23 (1) any wages, salary, employment benefits, or other
24 compensation denied or lost to the individual by reason of the
25 violation or, if wages, salary, employment benefits, or other
26 compensation has not been denied or lost, any actual monetary
27 losses sustained by the individual as a direct result of the

1 violation, including the cost of providing necessary care, not to
2 exceed an amount equal to the individual's wages or salary for 12
3 weeks; and

4 (2) interest on the amount determined under
5 Subdivision (1) computed at the prevailing rate of interest on
6 judgments.

7 (b) The employer is also liable for equitable relief as
8 appropriate, including employment, reinstatement, and promotion.

9 (c) An action to recover damages or equitable relief under
10 this section may be maintained by any one or more individuals for
11 and on behalf of those individuals.

12 (d) In addition to any judgment awarded to the plaintiff,
13 the court may require the defendant to pay reasonable attorney's
14 fees, reasonable expert witness fees, and other costs.

15 SECTION 2. (a) This Act applies only to a suspension,
16 termination, or other adverse employment action that is taken by an
17 employer against an employee because of an employee absence
18 authorized under Chapter 83, Labor Code, as added by this Act, that
19 occurs on or after January 1, 2018. Action taken by an employer
20 against an employee for an employee absence occurring before
21 January 1, 2018, is governed by the law in effect immediately before
22 the effective date of this Act, and the former law is continued in
23 effect for that purpose.

24 (b) An employee is not entitled to take leave as provided by
25 Chapter 83, Labor Code, as added by this Act, before January 1,
26 2018.

27 (c) The Texas Workforce Commission shall adopt rules and

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1 prescribe notices as required by Chapter 83, Labor Code, as added by
2 this Act, not later than November 1, 2017.

3 SECTION 3. This Act takes effect September 1, 2017.